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Attorneys for Plaintiff Francisco Schiller, on behalf of himself
and as representative for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

FRANCISCO SCHILLER, on behalf of himself
and as representative for the State of California
on behalf of all other aggrieved employees,

Plaintiff,

v.

ASHLEY DISTRIBUTION SERVICES, LTD.,
a Wisconsin Limited Company; and DOES 1
through 10, Inclusive,

Defendants.

CASE NO. CIV DS 2013264

**REPRESENTATIVE ACTION COMPLAINT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
[Labor Code §§ 2698, et seq.]**

1. Civil Penalties Pursuant to the PAGA for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, et seq.);
2. Civil Penalties Pursuant to the PAGA for Failure to Provide Meal Periods (Lab. Code §§ 2698, et seq.);
3. Civil Penalties Pursuant to the PAGA for Failure to Provide Rest Periods (Lab. Code §§ 2698, et seq.);
4. Civil Penalties Pursuant to the PAGA for Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 2698, et seq.);
5. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 2698, et seq.);
6. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 2698, et seq.);

Representative Action Complaint

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 16 2020

LaShondra Richardson

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7. Civil Penalties Pursuant to the PAGA for Failure to Reimburse Business-Related Expenses (Lab. Code §§ 2698, *et seq.*); and
8. Civil Penalties Pursuant to the PAGA for Failure to Maintain Accurate Records (Lab. Code §§ 2698, *et seq.*).

1 Plaintiff FRANCISCO SCHILLER ("Plaintiff"), on behalf of himself and as representative for
2 the State of California, the California Labor and Workforce Development Agency ("LWDA"), and on
3 behalf of all other aggrieved employees, hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of
7 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, against ASHLEY DISTRIBUTION SERVICES,
8 LTD., a Wisconsin Limited Company, and DOES 1 through 10, Inclusive (collectively, "Defendants")
9 to recover civil penalties arising out of Defendants' labor code violations including failure to: pay all
10 wages; inform of and provide off-duty meal and rest periods; provide accurate itemized wage
11 statements; timely pay all wages due during and upon separation of employment; reimburse necessary
12 business-related expenses; and maintain accurate records.

13 2. Plaintiff has given written notice of these claims and allegations to the California Labor
14 and Workforce Development Agency ("LWDA") on April 9, 2020. A true and correct copy of
15 Plaintiff's Notice showing compliance with Labor Code section 2699.3 is attached hereto as **Exhibit**
16 **1**. As there has been no LWDA intervention within 65 days of that notice, Plaintiff asserts claims for
17 civil penalties as a representative for and on behalf of the State of California in a representative
18 capacity, as provided by the PAGA to the extent permitted by law, as an aggrieved non-exempt
19 employee. Plaintiff is an aggrieved employee and has standing to bring a representative action on
20 behalf of the State of California and the LWDA as a private attorney general.

21 3. Plaintiff asserts claims for civil penalties as a representative of the State of California, as
22 authorized by the Private Attorneys General Act of 2004 ("PAGA"), and to the extent permitted by
23 law, on behalf of aggrieved employees who held the positions identified herein and suffered one or
24 more of the violations alleged. Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

25 4. Plaintiff seeks to represent all current and former non-exempt employees of Defendants
26 in California who suffered one or more of the alleged violations ("aggrieved employees") during the
27 period one year and 65 days before this Complaint is filed until the start of trial in this matter ("PAGA
28 Period").

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II.

JURISDICTION AND VENUE

5. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure section 395. Defendants conduct business and commit Labor Code violations in San Bernardino County. The unlawful acts alleged have a direct effect on aggrieved employees within California and within San Bernardino County.

6. This Court has jurisdiction over Plaintiff's claims because Defendants regularly conduct business in California; are alleged to have violated the law in California; Plaintiff's claims raise no federal question; and, PAGA civil penalty actions are not subject to federal jurisdiction.

7. This Court has jurisdiction over Plaintiff's and other aggrieved employees' claims under Labor Code sections 2698, *et seq.*

8. On information and belief, the California Superior Court has primary and original jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.

9. Defendant is located in Wisconsin for service of process and Plaintiff will effectuate service of process on Defendant ASHLEY DISTRIBUTION SERVICES, LTD. at its Wisconsin address.

III.

THE PARTIES

A. Plaintiff

10. Plaintiff Francisco Schiller is over the age of eighteen (18) and was at all relevant times a California resident. Plaintiff has been employed by Defendants as a non-exempt, hourly paid driver since approximately December 2017. He began driving a shuttle between Defendants' Colton, Redlands, and San Bernardino facilities. After about a year, he became a backhaul shuttle driver for Defendants, picking up loads from Defendants' Colton facility and transporting the loads to third-party delivery locations.

1 **B. Defendants**

2 11. Plaintiff is informed, believes, and alleges ASHLEY DISTRIBUTION SERVICES,
3 LTD. is a Wisconsin Limited Company and has conducted business, and employed Plaintiff and other
4 aggrieved employees during the PAGA Period, in the County of San Bernardino.

5 12. The true names and capacities, whether individual, corporate, associate, or otherwise, of
6 Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who sues Defendants by
7 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and
8 alleges, each DOE Defendant is legally responsible in some manner for the unlawful acts alleged.
9 Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of DOE
10 Defendants when they become known.

11 13. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this
12 action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the acts of
13 each Defendant are legally attributable to the other Defendants.

14 **IV.**

15 **GENERAL ALLEGATIONS**

16 14. During the PAGA Period, Defendants conducted business in California and San
17 Bernardino County, and employed Plaintiff and other aggrieved employees in the State of California.

18 15. During the PAGA Period, Plaintiff and other aggrieved employees of Defendants worked
19 under the same policies, practices, and procedures relating to their employment.

20 16. Responsibilities for Plaintiff and other aggrieved employees include, among other things,
21 driving shuttles to deliver trailers and containers between Defendants' facilities and to third parties.

22 17. During the PAGA Period, Plaintiff and other aggrieved employees were not regularly
23 provided duty-free 30-minute meal periods for shifts of five hours or more, which began before the
24 end of the fifth hour of work, pursuant to the Labor Code, IWC Wage Order 7-2001, and all other
25 applicable Wage Orders, or paid compensation in lieu thereof in the amount of one hour of pay at their
26 regular rate of pay. Plaintiff contends that due to the demand of the job, Plaintiff and other aggrieved
27 employees were not always able to take a 30-minute duty-free meal period for shifts of five hours or
28 more. Furthermore, the meal periods provided to Plaintiff and other aggrieved employees were often

1 short insofar as they were not at least 30 minutes in length, as required under California law.
2 Additionally, Plaintiff and other aggrieved employees regularly worked shifts of more than 10 hours
3 per day and were not provided with a second off-duty meal period of 30 minutes for each shift of more
4 than 10 hours. On information and belief, Plaintiff and other aggrieved employees did not waive their
5 right to receive meal periods, including second meal periods on eligible shifts of more than ten hours.
6 Despite Plaintiff and other aggrieved employees not being provided with compliant meal periods,
7 Defendants required Plaintiff and, on information and belief, other non-exempt employees to punch
8 in and out multiple times at the end of the shift and then adjusted the time clock punches to make it
9 appear as though employees received compliant meal periods.

10 18. During the PAGA Period, Plaintiff and other aggrieved employees were not authorized
11 or permitted to take duty-free 10-minute rest periods for work periods of four (4) hours or major
12 fractions, pursuant to the Labor Code, IWC Wage Order 7-2001, and all other applicable Wage Orders,
13 nor paid compensation in lieu thereof in the amount of one hour of pay at their correct regular rate of
14 pay including all wage compensation during the pay period. Furthermore, Plaintiff and other aggrieved
15 employees regularly worked shifts of more than 10 hours per day and were not provided with a third
16 duty-free rest period of 10 minutes for each shift of more than 10 hours. On information and belief,
17 Plaintiff and other aggrieved employees did not waive their right to receive third rest periods on
18 eligible shifts of more than ten hours.

19 19. During the PAGA Period, Defendants knowingly and willfully failed to provide accurate
20 itemized wage statements to Plaintiff and other aggrieved employees, which did not include, among
21 other things, the accurate applicable rates of pay, including the overtime rate of pay, for all hours
22 worked. Additionally, because Defendants failed to compensate Plaintiff and other aggrieved
23 employees for all hours worked and for any non-compliant meal or rest period, the itemized wage
24 statements provided by Defendants to Plaintiff and other aggrieved employees were inaccurate. As a
25 result, the wage statements that Defendants furnished to Plaintiff and other aggrieved employees were
26 incomplete and inaccurate and failed to comply with the requirements of Labor Code section 226(a).

27 20. During the PAGA Period, Defendants had a consistent policy and practice of failing to
28 timely compensate Plaintiff and other aggrieved employees for all wages owed during and upon

1 separation of employment, in violation of California state wage and hour laws.

2 21. Plaintiff alleges Defendants failed to pay all wages due for all hours worked, including
3 hours worked undergoing daily medical checks by Defendants, which involved Defendants taking
4 employees' temperature to ensure they were not sick and potentially infected with the Coronavirus,
5 and taking/receiving Defendants' routine and regular phone calls and text messages, informing
6 employees of the following day's delivery load, off-the-clock.

7 22. Additionally, Defendants failed to pay Plaintiff and other aggrieved employees all wages
8 that were due and owing to them including meal and rest period premiums, and regular, minimum,
9 and overtime wages within the required time during their employment and upon their separation of
10 employment, in violation of the Labor Code and the applicable IWC Wage Order.

11 23. Defendants additionally failed to incorporate non-discretionary bonuses paid to
12 employees into the employees' regular rate of pay. As a result, overtime wages that were paid by
13 Defendants were inaccurate and underpaid.

14 24. During the PAGA period, Defendants failed to reimburse Plaintiff and other aggrieved
15 employees for necessary business-related expenses incurred in direct consequence of the discharge of
16 their duties. Plaintiff and other non-exempt employees were required to use their personal cell phone
17 for work-related purposes, including to communicate with Defendants regarding trailer counts and
18 load information. Additionally, Defendants contacted Plaintiff and other aggrieved employees on their
19 cell phones to inform them of their delivery load for the following day at work. Although Plaintiff and
20 other aggrieved employees incurred these necessary business-related expenses in the discharge of their
21 job duties for Defendants, Defendants failed to reimburse non-exempt employees for these expenses
22 in violation of California law.

23 25. By requiring Plaintiff and other aggrieved employees to work off-the-clock, including by
24 requiring them to work while clocked out for meals, Defendants did not keep required records showing
25 the accurate number of daily hours worked and wages earned by Plaintiff and other aggrieved
26 employees.

27 26. For purposes of this action, Plaintiff, as a representative of the State of California, will
28 seek to invoke Labor Code section 1195.5 which states: "The Division of Labor Standards

1 Enforcement shall determine, upon request, whether the wages of employees, which exceed the
2 minimum wages fixed by the commission, have been correctly computed and paid. For this purpose,
3 the division may examine the books, reports, contracts, payrolls and other documents of the employer
4 relative to the employment of employees. The division shall enforce the payment of any sums found,
5 upon examination, to be due and unpaid to the employees.”

6 27. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any
7 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
8 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,
9 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
10 brought by an aggrieved employee on behalf of himself or herself and other current or former
11 employees pursuant to the procedures specified in Section 2699.3.”

12 28. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for
13 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
14 provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more
15 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
16 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
17 for each subsequent violation.”

18 29. Pursuant to California Labor Code section 558(a), “[a]ny employer or other person acting
19 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
21 be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
22 underpaid employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars
24 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
25 addition to an amount sufficient to recover underpaid wages.” Plaintiff seeks only to recover the civil
26 penalty provided for in section 558(a) for the violations alleged herein and **does not** seek to recover
27 underpaid wages.

28 30. Pursuant to California Labor Code section 558.1, Defendants are employers of Plaintiff,

1 and/or a person acting on behalf of Plaintiff's employer, who violated, or caused to be violated, any
2 provision regulating minimum wages or hours and days of work in the applicable order of the Industrial
3 Welfare Commission, as well as California Labor Code sections 201, 202, 203, 226, 510, 512, 558, 1194,
4 1197.1, and 1198, and as such, are liable as an employer of Plaintiff and other aggrieved employees
5 employed in the State of California.

6 31. Plaintiff, as a representative of the general public and State of California, seeks to recover
7 all civil penalties under the PAGA, Labor Code sections 2699 and 2699(f)(2), for violations of sections
8 201-204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1198, and 2802 shown to
9 have occurred, in an amount according to proof, as to those penalties that are otherwise only available
10 in public agency enforcement actions. The funds recovered will be distributed in accordance with the
11 PAGA, with 75% of penalties recovered distributed to the LWDA on and 25% distributed to the
12 aggrieved employees, subject to Court approval.

13 V.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PAY MINIMUM,
17 REGULAR, AND OVERTIME WAGES
[Labor Code §§ 2698, *et seq.*]**

18 32. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

19 33. Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a
20 day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any
21 one workweek and the first eight hours worked on the seventh day of work in any one workweek shall
22 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
23 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
24 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
25 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
26 pay of an employee."

27 34. Labor Code section 1194(a) provides: "Notwithstanding any agreement to work for a
28 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime

1 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
2 the full amount of this minimum wage or overtime compensation, including interest thereon,
3 reasonable attorney's fees, and costs of suit."

4 35. Labor Code section 1197 states: "The minimum wage for employees fixed by the
5 commission is the minimum wage to be paid to employees, and the payment of a less wage than
6 minimum wage so fixed is unlawful."

7 36. Labor Code section 1197.1 states: "Any employer or other person acting either
8 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
9 any employee a wage less than the minimum fixed by an order of the commission shall be subject to a
10 civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable
11 penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one
12 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
13 underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250)
14 for each underpaid employee for each pay period for which the employee is underpaid regardless of
15 whether the initial violation is intentionally committed."

16 37. Labor Code section 1198 provides: "The maximum hours of work and the standard
17 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
18 conditions of labor for employees. The employment of any employee for longer hours than those fixed
19 by the order or under conditions of labor prohibited by the order is unlawful."

20 38. Labor Code section 1199, which is a statute listed for which PAGA default civil penalties
21 are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that: "Every employer
22 or other person acting either individually or as an officer, agent, or employee of another person is guilty
23 of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by
24 imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or
25 causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited
26 by an order of the commission; (b) Pays or causes to be paid to an employee a wage less than the
27 minimum fixed by an order of the commission; [or] (c) Violates or refuses or neglects to comply with
28 any provision of this chapter or any order or ruling of the commission."

1 39. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law, any
2 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
3 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,
4 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
5 brought by an aggrieved employee on behalf of himself or herself and other current or former
6 employees pursuant to the procedures specified in Section 2699.3."

7 40. Labor Code section 2699(f)(2) provides: "For all provisions of this code except those for
8 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
9 provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more
10 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
11 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
12 for each subsequent violation."

13 41. Labor Code section 2699.5 provides, in pertinent part that "provisions of subdivision (a)
14 of Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] ...1194,
15 1194.1" and allow for recovery of civil penalties pursuant to the PAGA.

16 42. During all or a substantial part of the PAGA Period, Defendants failed to pay minimum,
17 regular, and overtime wages for all hours worked in excess of 8 hours per day and/or 40 hours per
18 week, and all hours subject to Defendants' control. Specifically, Plaintiff and other aggrieved
19 employees were not paid by Defendants for time they spent undergoing daily medical checks by
20 Defendants nor were they paid for time they spent receiving phone calls and text messages from the
21 Defendants while off-the-clock regarding their delivery loads for the following day. Defendants
22 additionally failed to incorporate non-discretionary bonuses paid to employees into the employees'
23 regular rate of pay for purposes of calculating overtime pay, resulting in inaccurate and underpaid
24 overtime wages. Plaintiff and other aggrieved employees were also sometimes required to remain
25 under the Defendants' control during meal and rest periods without being paid any compensation,
26 including minimum, regular, or overtime wages for hours worked during on-duty meal periods. To the
27 extent these unpaid hours worked were overtime hours, Defendants failed to pay overtime premium
28 wages.

1 43. As a result of Defendants' failure to pay overtime wages for hours worked in excess of
2 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
3 eight hours worked on the seventh day of work in any one workweek, Defendants, and each of them,
4 are liable for civil penalties within the applicable limitations period of Labor Code section 2699(f)(2)
5 for violations of Labor Code sections 1194 and 1194.2 in the amount of \$100 for each aggrieved
6 employee per pay period for the initial violation and \$200 for each subsequent violation, for
7 Defendants' failure to pay Plaintiff and other aggrieved employees overtime wages.

8 44. Pursuant to California Labor Code section 558(a), "[a]ny employer or other person acting
9 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
11 be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the employee was underpaid in addition to an
13 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars
14 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
15 addition to an amount sufficient to recover underpaid wages." Plaintiff seeks only to recover the civil
16 penalty provided for in section 558(a) for the violations alleged herein and **does not** seek to recover
17 any underpaid wages.

18 45. Defendants' conduct also violates Wage Order 7-2001 by failing to pay minimum and
19 overtime wages to employees.

20 46. Plaintiff, as a representative of the general public, will and does seek to recover any and
21 all penalties under Labor Code section 2699(f)(2) for each and every violation of the Labor Code
22 shown to exist or to have occurred, in an amount according to proof, as to those penalties that are
23 otherwise only available in public agency enforcement actions. Funds will be distributed in accordance
24 with the PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA on behalf
25 of the State of California. The exact amount of the applicable penalty is all in an amount to be shown
26 according to proof at trial.

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SECOND CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE MEAL PERIODS
[Labor Code §§ 2698, *et seq.*]

47. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

48. Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

49. Labor Code section 226.7(b) provides: “An employer shall not require an employee to work during a meal...period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

50. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee a meal...period in accordance with a state law...the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.”

51. During the PAGA Period, Plaintiff and other aggrieved employees were not provided with legally compliant, off-duty meal periods. Furthermore, the meal periods provided to Plaintiff and other aggrieved employees were often short insofar as they were not at least 30 minutes in length. Additionally, Plaintiff and other aggrieved employees regularly worked shifts of more than 10 hours per day and were not provided with a second off-duty meal period of 30 minutes for each shift of more than 10 hours. On information and belief, Plaintiff and other aggrieved employees did not waive their right to receive meal periods, including second meal periods on eligible shifts of more than ten hours. Despite Plaintiff and other aggrieved employees not being provided with compliant meal periods, Defendants required Plaintiff and, on information and belief, other non-exempt employees to punch in and out multiple times at the end of the shift and then adjusted the time clock punches to make it

1 appear as though employees received compliant meal periods.

2 52. By failing to provide off-duty and uninterrupted meal periods of at least thirty (30)
3 minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of work, and
4 failing to pay employees one hour of pay at their regular rate of pay for each workday a meal period
5 was not provided, Defendants willfully violated Labor Code sections 226.7 and 558(a)(3), and Wage
6 Order 7-2001.

7 53. By failing to provide a second off-duty and uninterrupted meal period of at least thirty
8 (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of pay at their
9 regular rate of pay for each eligible workday a second meal period was not provided, Defendants
10 willfully violated Labor Code sections 226.7 and 558(a)(3), and Wage Order 7-2001.

11 54. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
12 Code for which there is no corresponding civil penalty, including Labor Code section 226.7. The civil
13 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
14 employee. Labor Code § 2699(f)(2).

15 55. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
16 2699(f)(2) penalties for each Labor Code section 226.7 or 512(a) violation, according to proof, as to
17 those penalties otherwise only available in public agency enforcement actions. Funds will be
18 distributed in accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed
19 to the LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in
20 an amount to be shown according to proof at trial.

21 **THIRD CAUSE OF ACTION**
22 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE REST**
23 **PERIODS**
[Labor Code §§ 2698, *et seq.*]

24 56. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

25 57. The "Rest Period" Section of applicable IWC Wage Order states: "Every employer shall
26 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
27 middle of each work period. The authorized rest period shall be based on the total hours worked daily
28 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." If an employer

1 fails to provide an employee a rest period in accordance with the applicable provision of the order, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
3 for each workday that the rest period is not provided.

4 58. Labor Code section 226.7(c) states: "If an employer fails to provide an employee a...rest
5 ...period in accordance with an applicable...order of the Industrial Welfare Commission...the
6 employer shall pay the employee one additional hour of pay at the employee's regular rate of
7 compensation for each workday that the...rest...period is not provided."

8 59. During the PAGA Period, Plaintiff and other aggrieved employees were not provided with
9 legally compliant, duty-free rest periods. Plaintiff, and on information and belief, other aggrieved
10 employees were often unable to take duty-free rest periods due to the demands of their job. For example,
11 if Plaintiff was at a customer location, he would frequently have to forego taking duty-free rest breaks.

12 60. By failing to authorize and permit Plaintiff to receive a duty-free rest period of at least
13 10 minutes for every four (4) hours or major fraction thereof worked per day, and by failing to provide
14 premium wages at the regular rate of pay when these periods were not permitted or authorized,
15 Defendants willfully violated Labor Code section 226.7 and Wage Order 7-2001.

16 61. By failing to provide a third duty-free rest period of at least thirty (10) minutes for shifts
17 of ten (10) hours or more and failing to pay employees one hour of pay at their regular rate of pay for
18 each eligible workday a third rest period was not provided, Defendants willfully violated Labor Code
19 sections 226.7 and 558(a)(3), and Wage Order 7-2001.

20 62. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
21 Code for which there is no corresponding civil penalty, including Labor Code section 226.7. The civil
22 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
23 employee. Labor Code § 2699(f)(2).

24 63. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
25 2699(f)(2) penalties for each Labor Code section 226.7 violation, according to proof, as to those
26 penalties otherwise only available in public agency enforcement actions. Funds will be distributed in
27 accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA
28 on behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be

1 shown according to proof at trial.

2 **FOURTH CAUSE OF ACTION**
3 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE**
4 **ACCURATE ITEMIZED WAGE STATEMENTS**
5 **[Labor Code §§ 2698, *et seq.*]**

6 64. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

7 65. Labor Code section 226(a) provides: "An employer, semimonthly or at the time of each
8 payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft,
9 or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an
10 accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the
11 employee, except for any employee whose compensation is solely based on a salary and who is exempt
12 from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
13 Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the
14 employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written
15 orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the
16 inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last
17 four digits of his or her social security number or an employee identification number other than a social
18 security number; (8) the name and address of the legal entity that is the employer. . .; and (9) all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
20 at each hourly rate by the employee..."

21 66. Furthermore, Labor Code section 226(e)(2)(A) states: "An employee is deemed to suffer
22 injury for purposes of this subdivision if the Employer fails to provide a wage statement."

23 67. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
26 violation in a subsequent citation, for which the employer fails to provide the employee a wage
27 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
28 penalties provided for in this section are in addition to any other penalty provided by law. In enforcing
this section, the Labor Commissioner shall take into consideration whether the violation was

1 inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation
2 when that violation was due to a clerical error or inadvertent mistake.”

3 68. During the PAGA period, Defendants knowingly and willfully failed to provide accurate
4 itemized wage statements to Plaintiff and other aggrieved employees, which did not include, among
5 other things, the accurate applicable rates of pay, including the overtime rate of pay, for all hours
6 worked.

7 69. Due to Defendants’ failure to pay for all hours worked and all meal and rest periods
8 premiums as required by the Labor Code, the wages and hours worked listed on each wage statement
9 provided to Plaintiff and other aggrieved employees were misstated and violated Sections 226(a)(1),
10 (2), (5), and (9). Defendants’ actions were intentional and willful.

11 70. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
12 enforce California’s labor laws, and the penalty provisions identified in Labor Code section 226.3.
13 Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise
14 capable of being collected by the Division of Labor Standards Enforcement (“DLSE”). Labor Code
15 section 2699.5 provides that Section 2699.3(a) applies to an alleged violation of Labor Code section
16 226.

17 71. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The
18 civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

19 72. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
20 2699(f)(2) penalties for each Labor Code section 226 violation, according to proof, as to those
21 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
22 distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on
23 behalf of the State of California.

24
25 **FIFTH CAUSE OF ACTION**
26 **PAGA CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY**
WAGES DUE DURING EMPLOYMENT
[Labor Code §§ 2698, *et seq.*]

27 73. Plaintiff incorporates all preceding paragraphs of this Complaint.

28 74. Labor Code section 204(a) requires employers to pay wages earned by employees within

1 strict time requirements. Defendants had a policy, practice, and procedure of willfully failing to pay
2 all earned wages of Defendants' employees twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.

4 75. Defendants failed to pay Plaintiff and other aggrieved employees all minimum, regular,
5 and overtime wages and all meal and rest period premium wages during their employment, as required
6 by Labor Code sections 204.

7 76. Labor Code sections 2698, *et seq.* impose upon Defendants, and each of them, a penalty
8 of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
9 and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation
10 of Labor Code sections 204 and 1198.

11 77. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
12 Code for which there is no corresponding civil penalty, including Labor Code section 204. The civil
13 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
14 employee. Labor Code § 2699(f)(2).

15 78. Plaintiff, as a representative of the general public, seeks to recover all penalties under
16 Labor Code section 2699(f)(2) for each and every violation of Labor Code section 204(a), in an amount
17 according to proof, as to those penalties that are otherwise only available in public agency enforcement
18 actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
19 recovered provided to the LWDA on behalf of the State of California.

20 **SIXTH CAUSE OF ACTION**
21 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY**
22 **WAGES DUE UPON SEPARATION**
[Labor Code §§ 2698, *et seq.*]

23 79. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

24 80. Labor Code sections 201-203 require employers to pay wages earned by employees
25 within strict time requirements. Defendants had a policy, practice, and procedure of willfully failing
26 to pay the earned wages of Defendants' former employees. If an employer willfully fails to timely and
27 fully pay all final wages the employer must, as a penalty, continue to pay an employee's wages for 30
28 days, or until the back wages are paid in full.

1 81. Defendants failed to pay Plaintiff and other aggrieved employees who ended their
2 employment with the Defendant all wages, including minimum, regular, overtime, and meal and rest
3 period premium wages, as required by Labor Code sections 201-203.

4 82. Labor Code section 256 states: "The Labor Commissioner shall impose a civil penalty in
5 an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

6 83. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
7 Code for which there is no corresponding civil penalty, including Labor Code section 203. The civil
8 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
9 employee. Labor Code § 2699(f)(2).

10 84. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
11 2699(f)(2) penalties for each Labor Code section 201-203 violation, according to proof, as to those
12 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
13 distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on
14 behalf of the State of California.

15 **SEVENTH CAUSE OF ACTION**
16 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO REIMBURSE**
17 **BUSINESS-RELATED EXPENSES**
[Labor Code §§ 2698, *et seq.*]

18 85. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

19 86. Labor Code section 2802 provides: "An employer shall indemnify his or her employees
20 for all necessary expenditures or losses incurred by the employee in direct consequence of the
21 discharge of his or her duties...[.]"

22 87. Labor Code section 2804 provides that this statutory right cannot be waived.

23 88. Labor Code section 2699(f)(2) provides: "For all provisions of this code except those for
24 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
25 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
26 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
27 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
28 for each subsequent violation."

1 89. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations
2 of Labor Code section 2802. Labor Code section 2699.5.

3 90. Defendants violated the above statutes throughout the applicable statutory period by
4 failing to reimburse Plaintiff and other aggrieved employees for necessary expenditures incurred in
5 direct consequence of discharging their duties, including expenses incurred by Plaintiff and aggrieved
6 employees for use of their personal cell phones.

7 91. Plaintiff, as a representative of the general public, will and does seek to recover any and
8 all penalties for each and every violation, in an amount according to proof, as to those penalties that
9 are otherwise only available in public agency enforcement actions. Funds recovered will be distributed
10 in accordance with PAGA, with 75% of the penalties recovered being reimbursed to the State of
11 California and the Labor and Workforce Development Agency ("LWDA").

12 **EIGHTH CAUSE OF ACTION**
13 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
14 **[Labor Code §§ 2698, *et seq.*]**

15 92. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

16 93. Labor Code section 1174(d) provides: "Every person employing labor in this state shall:
17 Keep, at a central location in the state or at the plants or establishments at which employees are
18 employed, payroll records showing the hours worked daily by and the wages paid to employees
19 employed at the respective plants or establishments. These records shall be kept in accordance with
20 rules established for this purpose by the commission, but, in any case shall be kept on file for not less
21 than three years."

22 94. Labor Code section 1174.5 provides: "Any person employing labor who willfully fails
23 to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject
24 to a civil penalty of five hundred dollars."

25 95. Labor Code section 1175 provides: "Any person, or officer or agent thereof, is guilty of
26 a misdemeanor who: (a) Neglects or refuses to furnish the information requested under the provisions
27 of Section 1174; (b) Refuses access to his place of business or employment to any member of the
28 commission or employee of the Division of Labor Standards Enforcement when administering or
enforcing this chapter; (c) Hinders such member, or employee in securing information authorized

1 by Section 1174; [or] (d) Fails to keep any of the records required by Section 1174.”

2 96. IWC Wage Order 7-2001, section 7 obligates an employer to keep accurate information
3 of wages earned and paid including applicable overtime, rest period and gratuity wages. IWC Wage
4 Order 7-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate
5 information with respect to each employee including the following: ...(3) Time records showing when
6 the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours
7 worked shall also be recorded.”

8 97. During all or a substantial portion of the PAGA Period, Defendants failed to maintain
9 accurate records showing the accurate number of hours works.

10 98. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and
11 other aggrieved employees, for civil penalties as required by Labor Code section 1174(d) or, in the
12 alternative, section 2699(f)(2).

13 99. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an
14 amount according to proof at time of trial, but not in an amount in excess of the jurisdiction of this
15 Court.

16 100. Plaintiff, as a representative of the general public, will and does seek to recover any and
17 all civil penalties for each and every violation, in an amount according to proof, as to those penalties
18 that are otherwise only available in public agency enforcement actions. Civil penalties recovered will
19 be distributed in accordance with the PAGA, with 75% of civil penalties recovered provided to the
20 LWDA on behalf of the State of California.

21 **PRAYER FOR RELIEF**

22 Plaintiff prays for judgment as follows:

23 A. That this action be maintained as a Representative Action under the PAGA, and Plaintiff
24 and his counsel be provided with all enforcement capability as if the action were brought by the
25 California Division of Labor Standards Enforcement;

26 B. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid
27 minimum, regular, and overtime wages pursuant to Labor Code section 1194, according to proof;

28 C. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid meal

1 period premiums earned pursuant to Labor Code section 226.7, according to proof;

2 D. For recovery of civil penalties permitted by Labor Code section 2699 for unpaid rest
3 period premiums earned pursuant to Labor Code section 226.7, according to proof;

4 E. For recovery of civil penalties permitted by Labor Code section 2699, for inaccurate
5 itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

6 F. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for failing to
7 timely pay all wage due pursuant to Labor Code section 204(a).

8 G. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for failing to
9 timely pay all final wages due pursuant to Labor Code sections 201-202;

10 H. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for failing to
11 pay statutory waiting time penalties due pursuant to Labor Code section 203;

12 I. For recovery of all civil penalties as permitted by Labor Code section 2699, for failing to
13 reimburse all necessary business-related expenses incurred, pursuant to Labor Code sections 2802 and
14 2804;

15 J. For Pre-Judgment and Post-Judgment interest;

16 K. For the Plaintiff to be recognized by the Court as serving as a Representative of the
17 LWDA, that he be deemed an "aggrieved employees" and to proceed in this PAGA Action, and to be
18 awarded some form of enhanced compensation for bringing this action should he prevail and provide
19 benefit to the State of California or other "aggrieved employees," subject to the Court's discretion;

20 L. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California
21 Labor Code sections 226, 1194, 2699.3, and all other applicable state laws including Code of Civil
22 Procedure section 1021.5; and,

23 ///

24 ///

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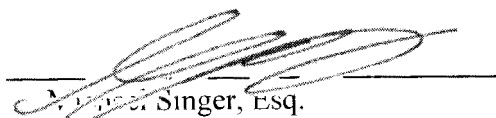
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M. Such other relief as this Court deems necessary, just, equitable, and proper.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: June 15, 2020

By: _____



Marta Manus, Esq.

Marta Manus, Esq.

Attorneys for Plaintiff Francisco Schiller, on behalf of
himself and as representative for the State of California
on behalf of all other aggrieved employees

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
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DIANA M. KHOURY, APC
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(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

April 9, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Ashley Distribution Services, Ltd.
One Ashley Way
Arcadia, WI 54612

Ashley Distribution Services, Ltd.
c/o Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717-2915

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Francisco Schiller on behalf of himself and all other aggrieved employees of Ashley Distribution Services, Ltd. in the State of California

Dear PAGA Administrator and Ashley Distribution Services, Ltd.:

This letter shall serve as Francisco Schiller's (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.*, regarding his wage and hour claims against his employer Ashley Distribution Services, Ltd. (hereinafter referred to as the "Employer"). Claimant submits this notice on behalf himself individually and all current and former non-exempt employees ("aggrieved" employees) employed by the Employer in the State of California during the one-year and 65-day period preceding the filing of this written notice.

This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(A)(1) providing the Labor and Workforce Development Agency (hereafter "LWDA") the opportunity to investigate the alleged claims contained herein. If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other non-exempt employees of the Employer, seeking civil penalties pursuant to the PAGA. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees are subject to the same employment policies and practices alleged herein which impermissibly deny non-exempt employees (i.e. "aggrieved employees") their rights pursuant to the California Labor Code and applicable IWC Wage Order and resulted in the violations set forth below.

FACTUAL STATEMENT

The Employer, Ashley Distribution Services, Ltd. ("ADS"), is the private transportation fleet for Ashley Furniture Industries, and delivers furniture throughout the United States, including California. Claimant has been employed by the Employer as a non-exempt, hourly paid driver since approximately December 2017.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other non-exempt employees of the Employer. Claimant alleges the Employer fails to pay all wages due for all hours worked including hours worked undergoing daily medical screenings and taking Employer phone calls off-the-clock, fails to provide legally compliant and off-duty meal and rest breaks, fails to provide Claimant and other non-exempt employees with accurate itemized wage statements showing the accurate applicable rates of pay, including the overtime rate of pay, for all hours worked, and fails to reimburse for all necessarily incurred business expenses incurred in the discharge of the job duties for the Employer.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other aggrieved employees employed as a non-exempt employee based on the Employer's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth in further detail below.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, and 2699, and the
"Records" Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer. . .; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..."

Furthermore, Labor Code section 226(e)(2)(A) states: "An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement."

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Claimant alleges that the Employer fails to provide Claimant and other non-exempt employees with accurate itemized wage statement complying with the requirements of the Labor Code section 226(a) and applicable IWC Wage Order. The wage statements provided by the Employer to non-exempt employees, including Claimant, fail to state the correct number applicable rates paid for all hours worked, including failing to state the overtime rate of pay. Attached hereto as **Exhibit 1** is an exemplar of a wage statement provided by the Employer to Claimant. On information and belief, the Employer fails to issue accurate itemized wage statements to all other non-exempt employees employed by the Employer in California.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the
“Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violates Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it does not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. The Employer fails to pay for all

hours worked including hours worked by Claimant and other aggrieved employees while undergoing daily medical checks by the Employer, which involves the Employer taking employees' temperature to ensure they are not sick and potentially infected with the Coronavirus. Furthermore, the Employer routinely and regularly contacts Claimant and other aggrieved employees via telephone and/or text message while Claimant and other aggrieved employees are off-the-clock to inform them of the following day's delivery load, without paying any compensation for these hours worked. Additionally, on information and belief, the Employer pays Claimant and other non-exempt employees non-discretionary bonuses and fails to incorporate these bonus payments into the employees' regular rate of pay for purposes of calculating the accurate overtime rate of pay. As a result, the overtime wages paid by the Employer are inaccurate and underpaid.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the "Meal Period" and "Rest Period" Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes" Labor Code section 226.7(a) states that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The "Rest Period" Section of applicable IWC Wage Order states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: "[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

The Employer fails to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly fails to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and fails to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often

short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts of more than ten hours. On information and belief, the Employer fails to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer requires Claimant and on information and belief, other non-exempt employees to punch in and out multiple times at the end of a shift and then adjusts the time clock punches to make it appear as though employees received compliant meal periods. Furthermore, the Employer fails to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the "Tools and Equipment" section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Labor Code section 2802(c) states that "[f]or purposes of [2802], the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to attorney's fees incurred by the employee enforcing the rights granted by [2802]."

Section 9(b) of the applicable IWC Wage Order states in pertinent part: "When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer."

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must "indemnify" an employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." This means that if the expense in question is "necessary" for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered "necessary" if it directly results from the employee's performance of his or her work duties. An expense is also "necessary" if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer fails to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other non-exempt employees are required to use their personal cell phone for work-related purposes, including to communicate with the Employer regarding trailer counts and load information. Additionally, the Employer contacts Claimant and other aggrieved employees on their cell phones to inform them of their delivery load for the following day at work. Although Claimant and other aggrieved employees incur business-related expenses in the discharge of their job duties for the Employer, the Employer fails to reimburse non-exempt employees for necessary business-related expenses in violation of California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF
EMPLOYMENT**

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents herself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the

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established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer fails to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, and overtime wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Additionally, the Employer fails to timely pay aggrieved employees all wages due upon separation of employment. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to list the correct rate of pay. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer fails to accurately record all accurate hours worked by Claimant and other aggrieved employees and fails to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 226(e) and 2699(g)(1))

Labor Code sections 226(e) and 2699(g)(1) give employees the right to recover in a civil action, penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessed. Accordingly, the Employer is liable for these items.

Labor Code section 226(e)(1) provides "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Labor Code section 2699(g)(1) provides "[e]xcept as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part."

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Claimant has already incurred costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action.

Sincerely,
COHELAN KHOURY & SINGER

A handwritten signature in black ink, appearing to read 'Marta Manus', written over the printed name.

Marta Manus, Esq.

cc:
Via Email only
Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
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EXHIBIT 1

Pay Statement

This is a statement of earnings and deductions. This pay statement is non-negotiable.



Ashley Distribution Services, Ltd.
One Ashley Way
Arcadio, WI 54612

Pay Statement

Period Start Date 03/08/2020
Period End Date 03/14/2020
Pay Date 03/20/2020
Document 99221
Net Pay \$648.28

Message

Hourly emp's only, see pg 2 of paystub for itemization of hours worked and rates of pay. 90 days employment req to use sick pay

Pay Details

FRANCISCO SCHILLER	Employee Number	094235	Pay Group	ADS California	Federal Income Tax	\$ 1
15680 SAGE CT	SSN	xxxxxx	Location	ADS CALIFORNIA	CA State Income Tax (Residence)	\$ 1
MORENO VALLEY, CA 92555	Job	SHUTTLE DRIVER DEL CA	Finan Dept	DIA6 - Fleet Ops - West	CA State Income Tax (Work)	\$ 1
USA	Pay Rate	\$19.0000	Work Center	DIST - DISTRIBUTION		
	Pay Frequency	Weekly	Group	20902 - ADS Customer Delivery		
			Nature	4090 - Indirect Labor, Hourly		

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
BEREAVEMENT	0.0000		\$0.00	\$152.00
BIRTHDAY	0.0000		\$0.00	\$150.00
BONUS	0.0000		\$0.00	\$92.67
HOLIDAY	0.0000		\$0.00	\$150.00
OVERTIME	8.2812		\$78.67	\$1,019.44
REGULAR	40.0000		\$750.00	\$0.00
REGULAR	8.2812		\$157.34	\$9,930.65
RETRO PAY	0.0000		\$0.00	\$63.31
SICK PAY	0.0000		\$0.00	\$170.19
Total Hours	48.2812			

Deductions

Deduction	Pre-Tax	Current	YTD
401(k)	Yes	\$49.80	\$536.41
Cancer Insurance	No	\$4.08	\$48.96
Charity Contrib	No	\$1.00	\$12.00
Child Life 10k	No	\$0.23	\$2.76
Dental Plan2	Yes	\$11.74	\$140.98
Employee ADD	Yes	\$0.69	\$8.28
EmployeeLife150	No	\$2.77	\$33.24
Hos Indemnity	No	\$4.98	\$59.76
Medical Plan 1	Yes	\$81.52	\$959.56
Vol Accident	No	\$6.03	\$72.36
Voluntary Legal	No	\$3.81	\$45.72

Taxes

Taxes	Current	YTD
CA Disability Employee	\$9.02	\$96.20
CA State Income Tax	\$23.27	\$235.95
Employee Medicare	\$13.08	\$159.48
Federal Income Tax	\$79.78	\$876.91
Social Security Employee Tax	\$55.93	\$556.41

Paid Time Off

Plan	Balance
CA Sick Pay	0.0000
Vacation	0.0000

Net Pay Distribution

Account Number	Account Type	Amount
xxxxx6503	Checking	\$648.28
Total		\$648.28

Pay Summary

	Gross	FIT Taxable Wages	Taxes	Deductions	Net Pay
Current	\$996.01	\$652.26	\$181.08	\$166.65	\$648.28
YTD	\$10,728.26	\$9,093.09	\$1,944.88	\$1,919.97	\$5,863.41

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